

Applicant : Mark Weissenborn et al.  
Appln. No. : 10/694,278  
Page : 5

#### REMARKS

Claims 1-11 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

In the Office Action, the Examiner has indicated that claims 1-7 have been allowed. Applicants would like to thank the Examiner for that indication.

Claims 8-10 have been rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 4,988,137 to Fleming. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 U.S.P.Q.2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 8 defines a bumper system including, among other things, a bumper beam having a face surface. An energy absorber engages the face surface and includes at least one non-foam section and at least one foam section. The at least one non-foam section has a rear wall and a front wall. The rear wall of the non-foam section abuts the face surface of the bumper beam. The foam section covers at least a portion of the front side of the non-foam section. The face surface of the bumper beam abuts at least half of the non-foam section of the energy absorber along a length of the beam.

The prior art of record does not disclose or suggest the above noted features of claim 8. Specifically, the Fleming '137 patent does not include a face surface of a bumper beam that abuts at least half of a non-foam section of an energy absorber along a length of the beam. Accordingly, Applicants submit that claim 8 is in condition for allowance. Furthermore, claims 9 and 10 depend from claim 8, and since claim 8 defines unpatentable subject matter as discussed above, claims 9 and 10 define patentable subject matter. Accordingly, claims 8-10 are in condition for allowance.

Applicant : Mark Weissenborn et al.  
Appln. No. : 10/694,278  
Page : 6

Claims 8-11 have been rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,100,187 to Loren. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 8 defines a bumper system as described above. The prior art of record does not disclose or suggest the above noted features of claim 8. Specifically, the Loren '187 patent does not include a face surface of a bumper beam that abuts at least half of a non-foam section of an energy absorber along a length of the beam. Accordingly, claim 8 is in condition for allowance. Furthermore, claims 9 and 10 depend from claim 8, and since claim 8 defines unobvious patentable subject matter as discussed above, claims 9 and 10 define patentable subject matter. Accordingly, claims 8-10 are in condition for allowance.

Claim 11 defines a bumper system including, among other things, a bumper beam having a face surface. An energy absorber engages the face surface and includes at least one non-foam section and at least one foam section. The at least one non-foam section has a rear side and a front side. The rear side of the non-foam section abuts the face surface of the bumper beam. The foam section covers at least a portion of the front side of the non-foam section. The foam section also covers at least a portion of a top and bottom side of the bumper beam.

The prior art of record does not disclose or suggest the above noted features of claim 11. According to the Office Action, the Loren '187 patent includes a bumper beam 35 and an energy absorber including at least one non-foam section 16 and at least one foam section 52, 56 and 58. According to U.S. Patent No. 4,941,701 to Loren, the element 35 is a metal plate disposed on a forward surface of a mounting portion 34 of a beam 12. However, as illustrated in Fig. 4 of the Loren '701 patent, none of the foam sections 52, 56 or 58 covers at least a

Applicant : Mark Weissenborn et al.  
Appln. No. : 10/694,278  
Page : 7


portion of a top and bottom side of the element 35. Accordingly, the Loren '701 patent does not disclose a foam section that covers at least a portion of a top and bottom side of a bumper beam as claimed in claim 11. Accordingly, claim 11 is in condition for allowance.

All pending claims 1-11 are believed to be in condition for allowance, and a Notice of Allowability is therefore earnestly solicited.

Respectfully submitted,

Date

6/9/05

  
\_\_\_\_\_  
Marcus P. Dolce, Registration No. 46 073  
Price, Heneveld, Cooper, DeWitt & Litton, LLP  
695 Kenmoor, S.E.  
Post Office Box 2567  
Grand Rapids, Michigan 49501  
(616) 949-9610

MPD/msj